IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No. 235 of 2007

Date of decision 7.5.2007

Jai Dyal and others **…Petitioners.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the petitioners : Mr. K.B. Khajuria, Advocate.

For the respondent : Mr. Ashok Chaudhary, Addl. A.G.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Police challaned a man by the name of Hari Ram for allegedly committing murder of a lady, named Dei on the night intervening 1st / 2nd July, 2006. During the course of investigation some witnesses, including Rashid Mohammad, Pardhan of the Panchayat, stated to the police that Hari Ram, who has been challaned, made a statement that he and the present three applicants had committed the murder at a place called 'Chui Ghati', where they carried the deceased by physically lifting her from her house. A few other witnesses also made similar statements. However, the Investigating Officer found the version, allegedly given by Hari Ram to the

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[1] **Whether reporters of the local papers may be allowed to see the judgment?**

Pardhan and two three other witnesses, to be incorrect. Consequently only Hari Ram was challaned, because some other evidence suggestive of his involvement in the killing of the lady was found. The present applicants were not named even in column No. 2 of the challan.

3. During the course of the trial, after recording the statements of the aforesaid Pardhan and two other witnesses, the learned Sessions Judge has ordered the impleadment of the present applicants under Section 319 of the Code of Criminal Procedure. The order appears to be based upon the statements of the Pardhan and two – three other witnesses that accused Hari Ram had disclosed to them soon after he was captured and brought before the Pardhan that he and the present applicants had murdered the lady.

4. The applicants, besides being impleaded, have been taken into custody and their prayer for grant of bail has been rejected. Now, they have approached this Court through the present application, under Section 439 of the Code of Criminal procedure, for their release on bail.

5. Having heard the learned counsel for the applicants and the learned Additional Advocate General, I am of the view that this is a fit case where Court's discretion in the matter of grant of bail should be exercised in favour of the applicants. The record suggests that the present applicants have been ordered to be impleaded by the trial Court on the basis of the statement of the Pardhan of the Panchayat and two other witnesses to whom the challaned accused, namely Hari Ram, made a confessional statement impleading himself and the present applicants. However, the record suggests that the challaned accused Hari Ram had been making self-contradictory statements not only to the police after the arrival of the

police, but even to the Pardhan and such statements were found to be factually incorrect by the Pardhan himself. For example Hari Ram told that one of the applicants had entered the room of the deceased through a window. However, there were iron bars fitted to the window frame which were undamaged and because of those bars it was not possible to enter through the window. When the Pardhan confronted Hari Ram with this factual position, he changed the version and stated that he was already there in the room as he had gone to that room in the evening when the deceased was not there and had hidden himself under the cot of the deceased.

6. Taking into account the above stated position, I am of the considered view that the applicants deserve to be released on bail. Hence the application is allowed and the applicants are ordered to be released on their furnishing personal bonds in the sum of Rs.10,000/ each with one surety each in the like amount, to the satisfaction of the learned Sessions Judge, Chamba.

Dasti copy, as prayed for, on usual terms.

May 7, 2007 (BC) **(Surjit Singh), J.**